

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF NEW YORK

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PROGRESSIVE ADVANCED  
INSURANCE,

Plaintiff,

v.

ZACHARY T. ZAFUTO and BRENDAN  
M. ZIMMERMAN,

Defendants.

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**ORDER**

1:19-CV-00338 EAW

This case was referred for all pretrial matters and for reporting upon Plaintiff's previously-filed motion for summary judgment to United States Magistrate Judge Jeremiah J. McCarthy pursuant to 28 U.S.C. §§ 636(b)(1)(A)-(C). (Dkt. 8; Dkt. 16).<sup>1</sup> On March 23, 2020, Magistrate Judge McCarthy issued a thorough Report and Recommendation recommending that Plaintiff's unopposed motion for summary judgment (Dkt. 15) be granted as to defendant Brendan Zimmerman ("Zimmerman"), but denied to the extent it was sought against defendant Zachary Zafuto ("Zafuto") because relief against the latter defendant was improper since Plaintiff had obtained a clerk's entry of default against Zafuto. (Dkt. 22). The undersigned adopted that Report and Recommendation in its entirety by Order entered on May 4, 2020. (Dkt. 23).

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<sup>1</sup> To the extent it may be unclear from the docket, the Court hereby refers, *nunc pro tunc*, Plaintiff's motion for entry of default judgment (Dkt. 26) to United States Magistrate Judge Jeremiah J. McCarthy for a report and recommendation pursuant to 28 U.S.C. § 636(b)(1)(B) and (C).

Thereafter, Plaintiff filed a motion for default judgment against Zafuto (Dkt. 26), and Judge McCarthy has issued a Report and Recommendation that the motion be granted declaring that the automobile insurance policy issued by Plaintiff to Zafuto was properly terminated as of September 5, 2018, and therefore Plaintiff is not obligated to defend or indemnify Zafuto for any liability arising from an October 4, 2018, motor vehicle accident (Dkt. 32).

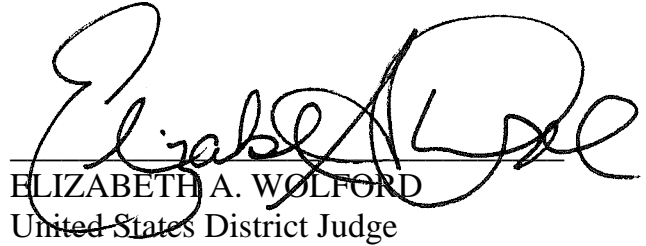
Pursuant to Fed. R. Civ. P. 72(b)(2) and 28 U.S.C. § 636(b)(1), the parties had 14 days to file objections. No objections were filed. The Court is not required to review *de novo* those portions of a report and recommendation to which objections were not filed. *See Mario v. P & C Food Mkts., Inc.*, 313 F.3d 758, 766 (2d Cir. 2002) (“Where parties receive clear notice of the consequences, failure [to timely] object to a magistrate’s report and recommendation operates as a waiver of further judicial review of the magistrate’s decision.”).

Notwithstanding the lack of objections, the Court has conducted a careful review of the Report and Recommendation as well as the filings previously made in the case, and finds no reason to reject or modify the Report and Recommendation. For the reasons set forth in the Report and Recommendation (Dkt. 32), this Court grants Plaintiff’s motion for entry of default judgment as to Zafuto (Dkt. 26).

Based upon the findings herein and the Court’s previous Order (Dkt. 23), the Clerk of Court is hereby directed to enter judgment in favor of Plaintiff declaring that Zafuto’s motor vehicle insurance policy (policy no. 916498100) was cancelled for non-payment of premiums on September 5, 2018, and therefore Plaintiff has no duty to defend, indemnify,

or otherwise provide insurance coverage to Zafuto for the underlying October 4, 2018, motor vehicle accident and resulting lawsuit pending in New York State Supreme Court, Erie County (*Zimmerman v. Zafuto*, Index No. 819470/2018), and accordingly close the case.

SO ORDERED.



ELIZABETH A. WOLFORD  
United States District Judge

Dated: September 8, 2020  
Rochester, New York